

Commissioners Meeting
July 16, 2013

Present: David Gogel, Al Logsdon, Mickey Toler, Chuck Painter, Tara Lloyd, Attorney Jeff Lindsey, Auditor Jane Lynam

Meeting was called to order by President David Gogel at 1:02 P.M.

Minutes

Logsdon made a motion to approve the minutes from June 18th as presented. Toler seconded the motion, motion approved.

Highway Report

Painter said he would be gone from July 20th through the 25th. Painter then reported that he had received a call from Elliott Englert from Region 15 and he wants to get started on pumping out the water at the Troy Refinery Site. They plan to hire Luttring to come in and do the pumping and hauling. Englert also said they would have to test the dirt we are putting in there to make sure they can use it. Painter explained that he really doesn't have the time to do this right now. Logsdon said right now our highest priority is paving roads, so just tell them you don't have the time to do it. Gogel said if they have the money in the grant to pay for it they can go ahead, if this is something over and above we need to discuss where the money is coming from. Logsdon said we aren't paying that bill, we didn't approve anything. Logsdon then told Painter to have Englert attend the August 6th meeting to talk about this project.

Painter said we have finished the Dale Lake Road and Steckler Road and are moving to Orchard Road to put seal coat on it from the high school up to CR 500, we hope to have it done this week. We still have 1250 and all the district roads to do. They put shoulder stone down on Old State Road and we'll have to put seal coat on that. Gohmann is wanting to start on CR 1550, Fulda Road on July 23rd to get the base down. We are going to let bids on Troy Refinery Road at the July 20th meeting and that will be all the CEDIT roads. We still have a little work to do on 600 E and it will be done.

Logsdon asked Painter if he was still in the process of trying to attain a roller. Painter said he had received the lease agreement in the mail yesterday; there were a couple of things he didn't like and he was trying to get hold of the gentleman and if he wouldn't change them he was going to call off the deal.

He said after he talked to the gentleman he would have Lindsey look over the lease agreement before he did anything.

Engineer Report

Lloyd said she had talked to Randy Carie and he acknowledged receipt of the counties letter concerning the drainage problems on old highway 231. They are reviewing the letter and felt there would be a meeting in the future to discuss the problems with us. Concerning the right-of-ways, the State felt they didn't want to waste taxpayers money and their peoples time, to redraw all the parcels and actually transfer ownership and make us owners of the right-of-ways. When they transferred old 45 and old 245 they didn't transfer ownership of the right-of-ways, just maintenance rights.

Lindsey said his interpretation of maintenance rights would mean that Lloyd could go ahead and issue the permit for the electric line to be laid. Logsdon made a motion to authorize the County Engineer to make decisions about requested improvements along county maintained right-of-ways including right-of-ways given by the state to maintain. Toler seconded the motion, motion approved.

Painter said we discussed this a little at the last meeting, but we need to decide if we want to keep the flashing light at 800 and old 231 and the flashing light on top of the hill before you get to the railroad track on old 231. If we do, there will be an electric bill associated with them.

Lindsey said if you plan to remove the signage and lights you need to have the Commissioners vote on that, that will give you more of a layer of liability protection. Gogel asked for Lloyd to gather some findings of fact as to why we don't need them and get back to us.

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Legal Report

Lindsey discussed the GIS Limited Use Agreements with Warrick County School Corp and Clark-Dietz Inc. WTH actually prepared the agreements; there will be no change in the layers and no charge because they are for public purposes as opposed to private entity for a commercial purpose.

Logsdon made a motion to approve the GIS Limited Use Agreement with Warrick County School Corporation and Clark-Dietz Inc. Toler seconded the motion, motion approved.

Lindsey then discussed the True RX Pharmacy agreement and explained that it entailed the same services, it just included more language made necessary by the Affordable Health Care Act and other federal legislation HIPPA regarding information disclosure, he explained that everything was in order.

Toler made a motion to approve the True RX Pharmacy Agreement. Logsdon seconded the motion, motion approved.

Gogel said he had been contacted by Lisa Gehlhausen from Region 15 about filling the close out papers from the Luce Township Sewer Grant and she needed the President of the Commissioners signature. Logsdon made a motion to approve Gogel signing the close out papers for the close out of the Luce Township Sewer Grant. Toler seconded the motion, motion approved.

Gogel explained that the Mariah Hill Picnic Committee asked for permission to close a 2 block section of County Road 687 E from 1910 N to 1930 N on Saturday August 10 from noon until 9:00 P.M. on Sunday August 11th. Logsdon made a motion to approve closing of the road for the Mariah Hill Picnic. Toler seconded the motion, motion approved.

Auditor Lynam asked the Commissioners to sign off on a claim for Worrell Corporation for postage. Logsdon made a motion to approve the claim for Worrell Corp for postage in the amount of \$4,136.68 as requested by the Assessor's Office. Toler seconded the motion, motion approved.

Gogel then brought to the attention of the other Commissioners that we have an employee in one of the

Departments that has a health issue and has used up all of their days. This persons fellow employees would like to donate some of their days to this employee so the employee can continue to be paid. So the question is, can we do that? Logsdon said we need to have Attorney Lindsay call Kent Irwin and ask if doing so would violate any state or federal laws. If this is a valid request, what steps do we need to take to make it a great gesture on the part of the employees and the county. Logsdon said if Mr. Irwin were to say that it's an approved procedure by the federal and state government to conduct such an action by the county then I think we need to make an amendment to the Personnel Manuel that would have a policy for doing this and set up some procedures to operate within so it is already approved and we can use it in the future without having to wait so long.

Sheriff Kermit Lindsey-Video Conferencing

Lindsey explained that the video conferencing would make things easier for the judge's office and the jail. Lindsey said representatives from Lieberman Technologies were present and would give their proposal on video conferencing.

Lieberman Technologies gave an overview of what they could provide for video conferencing to the judge and the jail. Karen Cheaney passed out packets for the Commissioners to follow along as Rick Culiver spoke on the goals of the project. Logsdon asked if we had enough band width with our current system. Culiver said we would need more band width, and that will be part of the proposal, the band width we are talking about would serve the courthouse and the sheriff's department; not just for the video conferencing, but for anything you do in both locations.

Culiver presented the goals of the project as:

Reduce security risk

Reduce expenses

Compliance with confidentiality

Connect with other non-Life Size video units

Conveniently connect Main Court Room and Sheriff's Department

Conveniently connect Small Court Room and Main Court Room

Conveniently connect Judge and Small Court Room

Video Interrogations

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Connect audio to Court recording system

Remote video access from home or office

Connect to video through iPads and tablets

Logsdon asked if there was any way that the communication between the offender and the Judge could be hacked. Culiver said we are doing everything we can to keep that from happening. This would all be done at a onetime charge, with a yearly maintenance fee. You would also have a recurring monthly charge for the internet access. After much discussion Logsdon made a motion to table the proposal until the Commissioners could go through it with the County Council. Toler seconded the motion, motion approved.

Stephanie Melton

EMPG Grant

Melton explained that the EMPG grant needed the Commissioners signatures, this shows that they have actually completed the required training sessions; they have taken 5, only required to have 3, to get the money reimbursed.

Travel Advisory

Toler made a motion to approve the Travel Advisory Ordinance #2013-05 on this the second reading. Logsdon seconded the motion, motion approved.

Jane Stout-Ambulance Financing Papers

Stout presented the financial papers to the Commissioners. Lindsey explained to the Commissioners that we had a promissory note with Freedom Bank in the amount of \$80,678, effective July 14, 2013. Interest rate of 1.770% per year, with three annual payments of \$27,860.01 beginning July 14, 2014 and the pay off three years later in 2016. A security agreement on the chassis for this and any future debts, a disbursement authorization, and an agreement to provide insurance is also included. Stout explained that insurance has been obtained in the amount of \$170,000. Toler made a motion to authorize President David Gogel to sign the promissory note with Freedom Bank. Logsdon seconded the motion, motion was approved.

Theresa Cail-US Highway 231 Addressing

Cail explained that the addresses on old 231 needed to be renamed. Starting at old 231 all the way up to Chrisney would be renamed 100 East, from old 231 to State Road 70 would be changed to 800 North. From Curl's curve to where St Rd 62 turns in change this to 1200 North this will line up with the existing CR 1200 North. The other thing is where SR 62 is now labeled as 231, will change all these to SR 62, all the way up until you get into Dale where SR 62 now turns into the new 231. There is a little section of road I have no addresses on, it is only 1/10 of a mile, if that, so I thought we would add this to Washington Street. Dale has already named Old 231 coming through town as Washington Street. There would be a few other changes that will need to be made. Logsdon told Cail to check with Dale to make sure they had no objections first. Cail said when she got everything done she would give all the information to Lloyd. Logsdon asked Cail to have something typed up exactly as it will be with the changes and bring it to the next meeting.

John Werner-Russ Winkler

Werner said he was here as a concerned property owner; he owns property in the vicinity of the proposed activity for which we are here, which is the proposal made by Farbest Foods Inc. to establish a brooder hub on CR 650 E just north of 1200 N. Werner felt that this was not an agricultural use, rather an industrial use by a corporation based in Dubois County. No one in Spencer County will benefit in any way what so ever. In their own outline they say it is a company owned and operated brooding house. This will have a detrimental effect on property value and people in the area. Werner said he felt that truck traffic will be a big issue, along with odor and water runoff. They will generate over 400 million pounds of manure a year, by their calculations. That would be 293 semi loads going in and out of there every year; gross weight of 80,000 pounds which will exceed your 8 ton weight limit. Werner said he felt this was a very poor location for this project; there are many nice homes in the area it is a rural residential area, Christmas Lake Village is only two miles away and this is an industrial operation, not an agricultural operation.

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Robert Woody said the road is narrow and semis pulling out onto 1200N will have to be in the wrong lane because the road is just not wide enough for them. This will be a dangerous situation for oncoming traffic.

Van Martin explained that he purchased property there because it was a paved road. When they stripped coal the road was torn up and the bond money wasn't there to fix it so the county had to fix it, now somebody else wants to tear it up. When we talked to Farbest they wouldn't give us any assurances that they wouldn't put in a slaughter house sometime in the future.

Jim Wallenmeyer said he owns property and lives on CR 650, the road is in terrible shape, it is not ditched, water runs down the road, it will never hold up under the semi traffic.

Theresa Criss Hartwig just built a new home on CR 1200 and said she was concerned about the cost of maintaining the roads and bridges for the county. She said her whole family lives on that road and with all the extra traffic she would be concerned with their safety also.

Russ Winkler said that when they spoke to Farbest they asked if they planned to spend any money on the roads because the county didn't have the money to maintain them; Jay Houchin, representative of Farbest wouldn't give them an answer

Doug Billow, Louise Wallenmeyer, Judy Neighbors, Darryl Pennington and Julie Laswell also spoke and expressed their concerns about the roads.

Mason Foertsch explained that when they hauled coal they bonded the roads and restored them when they were done.

Dan Hohl asked if Farbest was required to bond the roads. Lloyd responded that Farbest was aware of the bonding requirement and they will bond during construction but after the construction phase agricultural operations are exempt from the bonding of the road. Mr. Houchin from Farbest is aware that a right-of-way permit for utilities and a road bond will have to be secured before construction begins and it will have to be held up during the construction phase.

Alex Hohl asked if the people present were concerned about the turkey farms or were they just concerned because they are near them. Farbest is investing a lot of money so they will keep the roads up and the operation clean because this would be to their advantage. We run turkey farms and have to have a confined feeding operation permit, this is modern agriculture.

John Wetherill, Attorney for the Plan Commission said he had spoken to John Werner and Jeff Lindsey Attorney for the Commissioners and he had prepared an ordinance with two options to consider; make a confined feeding operation a contingent use permit, so that someone who was going to operate a confined feeding operation would have to first go to the Plan Commission and obtain a contingent use permit and also to put a two mile zone from any municipality boundary. He would be happy to take this to the Plan Commission if the Commissioners wanted him to do that.

Lindsey said the way the process would work was the Plan Commission could hold a public hearing on zoning changes and the Ordinance or the Commissioners would make recommendations to the Plan Commission who if they saw fit could schedule a public hearing that would first be advertised. After the public hearing any changes in the Ordinance that was approved by the Plan Commission would have to be sent back to the County Commissioners for final adoption. The two proposals that Wetherill talked about, not that we are advocating for them, but the conditional use would examine each and every application for a Confined Feeding Operation to determine if the location was a good location, what terms and conditions should be imposed, condition of the roads, etc. The other proposal requires a setback 2 miles from any municipal boundary as a no Confined Feeding Operation zone. I know there are some Confined Feeding Operations now within that 2 mile limit which would prohibit any further expansion, so that might not want to be the way you want to go. Treating a Confined Feeding Operation as a Contingent Use would give the county more control over the location of those operations.

Werner said he was striving for the Contingent Use because it would give the county more control over where these things go.

Lindsey said you could recommend that the Plan Commission study this as a possible change.

Gogel said he wasn't for or against it but he had no problem with the Plan Commission studying it. Toler said he felt we had to do our due diligence because of all the issues, and we live here too. The Plan Commission would only make a recommendation and ultimately it would come back to us to make the decision.

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Russ Luthy said he was a concerned citizen and he felt this was clearly an industrial operation. He said he was in the 1999 Leadership Spencer County class and one of their projects was to kind of look at what the future of Spencer County is and he felt that it was the consensus of himself and others there that we were here because we like the rural setting. Consensus also was that tourism was a clean and green industry, and he felt that this type of industrial operation would take away from the tourist industry as well as trying to retain the rural/agricultural setting we now have.

Logsdon asked if I was putting this operation in with my money, on land that I had purchased, would it be considered agriculture, but if a corporation was doing it, it would be considered industrial. Lindsey said as it now stands, regardless of ownership, it is considered a Confined Feeding Operation and because of the products that are grown, in our zoning ordinance, it is considered agriculture.

Logsdon said then to be clear, we can make a recommendation to the Plan Commission to have a hearing on this issue, the purpose being to gather input, to hear concerns, to insure they are meeting the current confined feeding operation, or to determine a Contingent Use Permit; what would we recommend to the Plan Commission to do if we so desired.

Lindsey explained that at the present time the ordinance does not include a Confined Feeding Operation as a Contingent Use Permit, in order to make it a Contingent Use the zoning ordinance would have to be changed. The process if you chose to do that would include you making a recommendation to the Plan Commission to consider amending the Ordinance to include Confined Feeding Operations as a Contingent Use Permit.

Lloyd asked to clarify for everyone here, if that whole process takes place, and there is a public hearing that is just about amending the ordinance, not about Farbest locating in that particular location correct? Lindsey replied that was correct.

Werner said he was speaking in favor of the Contingent use Permit, you could then require the company to take care of the roads.

Lloyd said she had spoken to Mr. Houchin about the right-of-way permits and the road bonding Permit for the construction phase, right now they are sitting on my desk; from my standpoint, to do my job, what do I do, do I go ahead with the paperwork or what do I do. Even if you make the recommendation, if the Plan Commission starts looking into the Contingent Use, does that even affect Farbest, they are already approved, are they grandfathered do I need to send out permits and get that ball rolling with them or do I now not send anything to them. What do I tell Mr. Houchin, that's on hold right now, from my standpoint where do I go with my job? Do we have them proceed with paperwork but not approve it or what.

Toler said he felt the issue needed to be tabled because we have a lot of work to do, lots of questions that need to be answered. We need to make a decision if we want to turn it over to the Plan Commission, because at this point all regulations are being met.

Logsdon said if we table it, at the next meeting we would have to make one of two decisions, we either forward it to the Plan Commission or approve the location.

Lindsey said you either make a recommendation to the Plan Commission or not, if you don't and they jump through all the hoops it moves forward.

Cail explained that from the Plan Commissions standpoint right now, it meets all of our requirements, we're done.

Wetherill agreed with Cail that all the setbacks in the zoning ordinance are met, so as far as the Plan Commission is concerned, we are not involved. As it stands right now, they are compliant.

Logsdon said then the only way the Plan Commission can get involved is for us to request them to hold a public hearing on this issue and consider amending the Zoning ordinance to include a statement of conditional approval of a Caveco. If we request the Plan Commission to hold a public hearing to consider amending the zoning ordinance when would that meeting take place?

Cail said they have a meeting in July, but there is not enough time to have it advertised for the July meeting so it would have to wait until the August meeting.

Logsdon then said if we direct the Plan Commission to consider amending the ordinance to include Conditional use Permit and one of those conditions is that that organization that would locate a business comparable to this one on this property with questionable roads would be

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responsible for maintaining the roads; how long does the State law let you require an organization to maintain the roads, is it only until they build the facility or is it forever. Lindsey said it could be forever, if the ordinance is amended and they apply for a Contingent Use Permit and the Board of Zoning Appeals heard that in a public hearing and said we think the only way you should put that in there is if you maintain that road, that could be forever or until they no longer use that facility for that purpose.

Mike Ward asked if you amend the ordinance now won't Farbest come back and say that it was done after the fact and sue the county.

Logsdon said he wanted everyone in attendance to know that Farbest came in to the Commissioners meeting two weeks ago and that was the first we had heard from them. Mr. Houchin, the representative from Farbest made the presentation, told us what their plans were and he left. We didn't approve anything, we listened. We then talked to Theresa Cail to make sure if this operation met all current guidelines and she said yes it does, as an agricultural enterprise, it meets all current guidelines. That's all that happened, except, several phone calls and listening as intent as we have today with no promises made to anybody. We haven't talked to anyone in Mr. Houchins' department since the day they were here. The county has a hard enough time maintaining the roads, we cannot afford a legal suit brought on by denying someone's operation if they have met all of our requirements, after the fact. We have to be careful about what we do.

Lindsey said even if the county takes an action to amend the ordinance it might not have any influence on this operation because they are too far along. Knowing that, is this the kind of policy you want to make going forward, it may or may not effect this operation, hopefully it would. If it didn't we could still have a conversation with them about working on the road for us. If you take this action that would be your only hope of effecting this operation and future operations going forward.

Logsdon said that after listening to all the testimony today that adding a Conditional Use section to our zoning ordinance could in no way harm the county, and would be intended to help. Logsdon then made a motion to recommend to the Plan Commission at their August meeting to consider amending the Zoning Ordinance to include Confined Feeding Operations as a Contingent Use. Toler seconded the motion, motion approved.

Lloyd asked again about sending out the permits to Farbest. The Commissioners told her to go ahead and send the paperwork.

Logsdon made a motion to adjourn. Toler seconded the motion, motion approved.

Meeting was adjourned at 4:22 P.M.

President

Attest:

